UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, DC

UNITED STATES POSTAL SERVICE

Case 07–CA–146385

and

BRANCH 232, NATIONAL ASSOCIATION
OF LETTER CARRIERS, AFL–CIO

Jennifer Y. Brazeal, Esq.,
for the General Counsel.
Roderick D. Eves, Esq.,
for the Respondent.

DECISION

STATEMENT OF THE CASE

CHRISTINE E. DIBBLE, Administrative Law Judge. This case was tried in Detroit, Michigan, on April 20, 2016. Branch 232 (Charging Union), National Association of Letter Carriers, AFL–CIO filed a charge in Case 07–CA–146385 on February 12, 2015.[1] The General Counsel issued the complaint and notice of hearing, and an amendment to the complaint on April 30 and April 4, 2016, respectively. The United States Postal Service (Respondent) filed a timely answer denying all material allegations. (GC Exhs. 1(a) to 1(m).)[2] However, at the start of the hearing, the General Counsel moved for a second amendment to the complaint which states:

> From about January 23, to about February 20, Respondent unreasonably delayed in furnishing the Charging Union with information it requested on about January 23, January 25, and January 28 asking for the names of all employees on the Deems Desirable list. Since about February 11, Respondent has failed to provide the Charging Union with information it requested on February 11 for (a)

[1] All dates are in 2015, unless otherwise indicated.

[2] Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh." for General Counsel's exhibit; "R. Exh." for Respondent's exhibit; "CU Exh." for Charging Union's exhibit; "ALJ Exh." for administrative law judge's exhibit; "Jt. Exh." for joint exhibit; "GC Br." for General Counsel's brief; "R. Br." for Respondent's brief; and "CP Br." for Charging Union's brief. My findings and conclusions are based on my review and consideration of the entire record.

> Employee Key Indicators Report to include Administrative Action Summary and showing if the employee is on Deems Desirable from January 2014 to current; and (b) letters given to employees indicating that they are on the Deems Desirablelist.

(GC Exh. 6.) Respondent filed a timely answer to the second motion to amend the complaint by arguing that the General Counsel failed to give timely notice of the amendment, thus depriving Respondent of due process. After careful consideration of the parties' positions, I granted the General Counsel's motion and allowed the amendment.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent provides postal service for the United States and operates facilities throughout the nation, including the State of Michigan. I find, and Respondent admits, that Section 1209 of the Postal Reorganization Act, 39 U.S.C. § 101, et seq. (PRA) gives the National Labor Relations Board (the Board/NLRB) jurisdiction over Respondent in this matter.

At all material times the Charging Union and National Association of Letter Carriers (NALC), AFL–CIO (National Union) have been labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Overview of Respondent's Operation

Respondent processes and delivers mail nationwide, and is organized into seven distinct regions: northeast, eastern, Great Lakes, capital metro, southern, western, and pacific. Each region is divided into districts; and the districts consist of postal locations that are grouped into an installation. Installations are comprised of a number of postal facilities within a certain city. The Great Lakes region, which is involved in this case, has seven districts: Detroit, Lakeland, Greater Michigan, Greater Indiana, Gateway, Central Illinois, and Chicago. The district and postal facility at issue are: the Detroit District and the Jackson Delivery Distribution Center (Jackson DDC). The Detroit District oversees postal facilities that encompass zip codes which begin with 480 – 485 and 492. These zip codes include installations in Ann Arbor, Flint, and Jackson.[3] The Jackson installation consists of the Jackson DDC facility, Jackson main post office, and substations.

[3] I have taken judicial notice of Respondent's administrative structure as set forth on its website. See http://about.usps.com/who-we-are/leadership/hq-org-photos?v=51416. F.R.E. 201(b); *Doron Precision Systems, Inc. v. FAAC, Inc*., 423 F.Supp. 2d 173, 179 n.8 (S.D.N.Y. 2006) ("a court may take judicial notice of information publicly announced on a party's website, as long as the website's authenticity is not in dispute and it's capable of accurate and ready determination.")

David Williams (Williams) is Respondent's chief operating officer and executive vice president. Great Lakes Assistant Vice President Jacqueline Krage Strako (Strako), reports directly to Williams. At all material times, Lee Thompson (Thompson) was the Detroit District manager. Also, the director of labor and human resources for the Detroit District was Lee Ward (Ward). During the relevant period: Cheryl Bell (Bell) was the postmaster of the Jackson DDC; Marvin Florence (Florence) and Brian Maxson (Maxson) were supervisors of customer service at the Jackson DDC; and Lonnie Lepper (Lepper) was an acting supervisor at the Jackson facility.[4]

The following constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time city letter carriers employed by Respondent at various facilities throughout the United States, but excluding professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, postal inspection service employees, employees in the supplemental work force, rural letter carriers, mail handlers, maintenance employees, special delivery messengers, motor vehicle employees, postal clerks, managerial employees, supervisory personnel, and security guards as defined in Public Law 9-375, 1201(2).

(GC Exhs. 1(d)) Since about 1990, and at all relevant times, Respondent has recognized the National Union as the exclusive collective-bargaining representative of the unit. (Jt. Exh. 1; GC Exh. 1(d); 1(f)) Charging Union has been designated servicing representative of the National Union's approximately 150 letter carriers at Respondent's facilities in Jackson, Michigan Center, Hillsdale, Tecumseh, Albion, Jonesville, Homer, and Hudson, Michigan. Martin Marshall (Marshall), letter carrier at the Jackson DDC, has been president of Charging Union since 2013. During the pertinent time period, Deborah Marriott (Marriott), city letter carrier, was the Charging Union's vice president; and Chad Serianni (Serianni) has been a city letter carrier and the Charging Union's steward.

B. Collective-Bargaining Agreement-Requests for Information

NALC entered into a nationwide collective-bargaining agreement (CBA) with Respondent, the most recent of which is effective from January 10, 2013 through May 20, 2016. The CBA also includes several memoranda of understanding (MOU) entered into between Respondent and NALC. Article 31 of the CBA governs requests for information (RFI). It reads in relevant part:

> Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or designee. All other requests for information shall be directed by the National President of the Union to the Vice President, Labor Relations. Nothing herein shall waive any rights the

[4] Although it was not explicitly identified, based on the context of Marshall's testimony, it appears that Lepper was an acting supervisor at the Jackson DDC facility. According to undisputed testimony, Lepper is currently a "full-fledged" supervisor. (Tr. 41.)

> Union may have to obtain information under the National Labor Relations Act, as amended.

(Jt. Exh. 1, p. 108.) In August 2012, the United States Court of Appeals for the Sixth Circuit issued a consent order directing that Respondent take certain actions to correct a pattern of "failing to provide information, from unduly delaying in providing information, or from any like or related manner failing or refusing to bargain in good faith either with the National APWU. . . "[5] (GC Exh. 2) Primarily as a result of the consent order, Respondent implemented protocols for processing unions' requests for information (RFI). The is no dispute that the Charging Union followed the appropriate protocols for requesting the information at issue.

C. Rules and procedures for governing and tracking leave

Article 10.5 of the CBA notes:

> D. For periods of absence of three (3) days or less, a supervisor may accept an employee's certification as reason for an absence.

(Jt. Exh. 1.) Respondent's Employee and Labor Relation Manual (ELM) section 513.361 further explains the rules governing sick leave documentation requirements for absences of three (3) days or less as:

> For periods of absence of three (3) days or less, supervisors may accept the employee's statement explaining the absence. Medical documentation or other acceptable evidence of incapacity for work or need to care for a family member is required only when the employee is on restricted sick leave (see 513.39) or when the supervisor ***deems*** documentation ***desirable*** for the protection of the interests of the Postal Service. Substantiation of the family relationship must be provided if requested.

(R. Exh. 2.) (emphasis added) The provisions governing sick leave allow Respondent to require employees, who are suspected of abusing the sick leave program, to submit supporting documentation when requesting sick leave An employee is classified as "deems desirable" if Respondent has determined that the employee must submit supporting documentation to justify his or her sick leave requests. The term is derived from the words "deems" and "desirable" used in the section 513.361 of the ELM and is commonly used by Respondent's employees.

Respondent has utilized the Enterprise Resource Management Systems (eRMS), a computerized system, for tracking and recording employees' time and attendance information. (Jt. Exh. 2.) Employees who are tardy to or absent from work due to illness or other reasons must report, in advance, their absence or tardiness by calling the eRMS 1-800 number. Calling the eRMS 1-800 number triggers a recording that prompts the caller to input their employee

[5] The consent order addressed information request issues between Respondent and the American Postal Workers Union (APWU), AFL–CIO, which represents a specific group of employees at Respondent's facilities nationwide.

identification number and choose a reason for their absence. Supervisors frequently access the eRMS to input leave requests and track employees' attendance.

D. Union's RFI: January 23 and 28

On January 23, Serianni hand-delivered a RFI to Maxson, his direct supervisor, that requested a "[c]opy of carriers currently on Dem (sic) Desirable List."[6] (GC Exh. 2.) The RFI was addressed to Postmaster Bell, and Supervisors Florence and Maxson. Serianni asked for the information because he was getting reports from several carriers that when calling into the eRMS 1-800 number to report an absence due to illness, they received a message instructing them to produce supporting documentation on their return to work. In response to the RFI, Maxson told Serianni that he did not control the eRMS in the office. Serriani explained to Maxson that the RFI was given to him because he was Serianni's direct supervisor; and advised Maxson to forward the RFI to the person that was able to produce the requested information. On January 28, 5 days after submitting his initial RFI, Serianni went to Maxson and told him that he had not received the information. Maxson replied that he had forwarded the RFI. Serianni gave him another copy of the RFI writing on it "Five days no info" and told Maxson that he still needed the information. (GC Exh. 3.) The RFI form was returned to Serriani's work case that same day with a notation written by Maxson that "no such list available in eRMS" and it was dated as being returned to the Charging Union on January 28.

Consequently, Serianni consulted with Marshall and Marriott for guidance on how to proceed on obtaining the requested information. Moreover, during the same timeframe, several actions occurred related to the Charging Union's attempt to get a response to its RFIs. In late January, management provided either Marshall or Marriott with copy of the RFI and wrote: (1) the Charging Union was provided zero documents; (2) "Forwarded to [undecipherable word] Florence I have not put anyone on deems desirable; and (3) "No such list N/A Case by Case." (GC Exh. 4; Tr. 40–41) On January 28, Marshall had a conversation with Lepper about why management did not provide the Charging Union with the names of letter carriers on the "deems desirable' list. Lepper explained that

> [T]he ERMS computer system does not generate a specific list, and that he [Lepper] would have to go into the ERMS for each individual employee and pull up a certain screen in the Employee Key Indicator Report, and that screen would show if the employee was on Deems Desirable, and if so, for how long they were on it.

(Tr. 42.) When Marshall asked Lepper why he had not accessed the information using that procedure, Lepper responded that it would take too long and he did not have the time. Marshall then spoke to Postmaster Bell who also told him that eRMS did not contain a "deems desirable" list that could be printed. He explained to her that a specific format was not the primary concern of the RFI, but rather, the objective was to obtain the names of employees within the eRMS that

[6] Serianni testified that the handwritten markings on the document were done by him except for the notation "no such list available in ERMS" which was written by Maxson.

are required to provide documentation when requesting sick leave. In response to Marshall's statement that Lepper told him it would take too long to retrieve the requested information from the eRMS, "[Bell] just shook her head and said, well, that's right, Lonnie's right. We can't print out a list so you're not going to get one." (Tr. 43.) However, she relented somewhat by telling him that she and Florence would try to recall who they placed on the "deems desirable" list and forward that information to him. Marshall objected, however, that Bell's compromise was unacceptable because the Charging Union needed to know exactly which employees were placed on the "deems desirable" list.

On January 28, Marriott also submitted a RFI to Respondent which requested, "names of any/all carriers put on deems desirable." (GC Exhs. 9, 10.) The RFI was addressed to Florence and Postmaster Bell. Lepper told Marriott to place the RFI on the desk for Florence. Florence attempted to get the requested information by calling the eRMS coordinator for guidance on retrieving a "deems desirable" list from the system. He was told a "deems desirable" list did not exist. Consequently, Florence testified that on January 28, he created a list of five employees that he recalled from memory were on the "deems Desirable" and placed the list face down on Marriott's desk. However, Marriott denied that she ever received a response to her January 28 information request. On approximately February 13, she wrote a note to Marshall on the RFI form submitted on January 28 that "I was told by Lonnie Lepper to leave on the desk for Marvin Florence, I never received any reply on the matter." (GC Exh. 9.) I credit Marriott's testimony that she did not receive Florence's list because of the overall demeanor of Marriott was more credible than Florence on this point. Moreover, unlike for Florence, Marshall's actions, as discussed above, buttress Marriott's testimony on this point.

After consulting with Marshall and Marriott, on or about February 6, Serianni, on behalf of the Charging Union, filed a grievance alleging that management failed to follow the Employee and Labor Relations Manual (ELM) 513.361 which governs the placement of employees on the "deems desirable" list; and article 31 of the CBA which sets forth management's obligation for responding to the union's requests for information. (GC Exh. 5)

E. Union's RFI: February 11

As a result of learning that Lepper could access Respondent's computer system to retrieve the requested information, on February 11, Marshall went to Florence on the workroom floor and handed him a packet of documents containing seventy-eight (78) separate RFIs with the individual names of employees requesting:[7]

1. Employee Key Indicators Report to include Administrative Action Summary and showing if the employee is on Deems Desirable for [employee] from January 2014 to current
2. If employee is on Deems Desirable, copy of the letter given to employee indicating he/she is on Deems Desirable

[7] Marshall also provided undisputed testimony that because the CBA requires Respondent to send employees letters to those classified as "deems desirable," he asked for copies of the letters given to them.

(GC Exh. 7) The packet also contained a cover letter with a signature line for Supervisor Florence to acknowledge that the union had "allowed [Florence] to simply sign this letter in receipt of each separate information request rather than signing all (78) requests." Id.

Marshall and Florence provide slightly different versions of the exchange between them over Florence's refusal to accept the RFIs. Marshall testified that he explained to Florence the content of the packet as he was trying to hand it to him. He stated that Florence replied that he did not have time to address the requests, "he didn't want to play [Marshall's] games, he wasn't going to take it." (Tr. 46–47) According to Marshall, it was only after he commented to another employee that he was a witness to Florence's refusal to take the documents that Florence took the packet from Marshall and wrote on the cover letter, "Refused to take," signed, dated, and returned it to Marshall.

Florence agrees that on February 11, Marshall approached him with a packet of documents and told him it was requests for information relating to employees designated "deems desirable." However, he contends that he told Marshall that he had already answered the Union's prior request for the same information; and he could not take the materials at that time because his hands were full with other items. Florence also testified that "I couldn't take [the RFI] during the course of the day because it was the end of the day, everybody was coming back, and I had other responsibilities at that time, thinking that [Marshall] was going to bring it back to me the next day." (Tr. 79–80.) Nonetheless, Florence admitted that he wrote on the cover letter of the packet "Refused to take" and "2/11/15," and signed his name.

I credit Florence's version of the encounter with Marshall on February 11, for several reasons. Florence corroborates most of Marshall's testimony that: (1) Marshall attempted to give him the packet of RFIs; (2) Marshall explained to him the contents of the stack of documents; (3) and Florence refused to take the RFIs from Marshall. Florence's argument that he was not refusing the RFIs but simply indicating that he was physically unable to take the documents because his hands were full with other items is not credible. First, if his hands were too full to take the documents then it is reasonable to assume that his hands would have been too full to write on the RFI that he was refusing to take it. Even assuming that although his hands were full with items he could still write, Florence fails to explain why he specifically wrote "Refused to take" as opposed to "unable to take" or "hands to full to accept documents" or some other variation noting his physical inability to accept the documents. Instead he specifically wrote "refused to take." Florence also admitted that another reason he refused to take the RFIs is because it was the end of the day; and he was too busy dealing with other matters. Based on the facts, I find that Marshall's version of his interaction with Florence on February 11, is more credible. I find that the facts show Florence refused to accept the RFIs because he believed (and admitted telling Florence) that he had already answered the RFI; and he was busy at the end of the day with many other duties to address.

The Charging Union continued its efforts to obtain a response to its February 11, RFI. In February 2016, Marshall went to the Detroit District's monthly labor-management meeting.[8] At the meeting Marshall approached Ward to tell him about the Charging Union's attempts to get a

[8] The Detroit District holds labor-management meetings once a quarter with NALC branch presidents and the NALC business agent to address labor issues.

satisfactory response to its RFIs and management's refusal to provide it. Ward "just kind of put his head down and said, well, that's not good; that's not right." (Tr. 50.)

On February 19, Marshall and Maxson met to discuss the grievance the Charging Union filed regarding Respondent's failure to provide it with information related to the Deems Desirables and the outstanding RFI.[9] Maxson gave Marshall a typewritten list with the names of five individuals that management thought were on the Deems Desirable list. In response to Maxson's query whether he had additional employees' names that he wanted included, Marshall added four names to the list for Marshall to verify their status in the eRMS. (GC Exh. 8.) Marshall and Maxson agreed to resolve the grievance by agreeing that "all carriers placed on deems desirable in ERMS as of 2/20/2015 will be removed immediately." According to Maxson, accessing and reviewing the Employee Key Indicator Report in eRMS to verify the "deems desirable" status of employees is a quick process. On the Step A Grievance Form the box for "disposition" of the grievance was checked "resolved" and signed and dated by Serianni and Maxson on February 20. (GC 5; Tr. 53 – 60.)

Despite the grievance resolution, Marshall never withdrew the RFIs the Charging Union submitted on January 23 and 28, and February 11. Likewise, Respondent has not provided the Charging Union with the Employee Key Indicators Reports for the 78 employees, nor the letters requested in the RFI submitted on February 11.

III. Discussion and Analysis

A. Legal Standards

Section 8(a) (5) of the Act mandates that an employer must provide a union with relevant information that is necessary for the proper performance of its duties as the exclusive bargaining representative. *NLRB v. Truitt Mfg. Co*. 351 U.S. 149, 153 (1956); *Detroit Edison Co. v. NLRB,* 440 U.S. 301, 303 (1979). ". . . [T]he duty to bargain unquestionably extends beyond the period of contract negotiations and applies to labor-management relations during the term of an agreement." *NLRB v. Acme Industrial Co*., 385 U.S. 432, 436 (1967). Information requests regarding bargaining unit employees' terms and conditions of employment are "presumptively relevant" and must be provided. *Whitesell Corp*., 352 NLRB 1196, 1197 (2008), adopted by a three-member Board, 355 NLRB 635 (2010), enfd. 638 F.3d 883 (8th Cir. 2011); *Southern California Gas Co*., 344 NLRB 231, 235 (2005). If the requested information is not directly related to the bargaining unit, the information is not presumptively relevant, and the requesting party has the burden of establishing the relevance of the requested material. *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *Earthgrains Co.*, 349 NLRB 389 (2007).

The standard for establishing relevancy is the liberal, "discovery-type standard." *Alcan Rolled Products*, 358 NLRB 37, 40 (2012), citing and quoting applicable authorities. In *Leland*

[9] Maxson testified that on February 19, he discussed with Marshall the Charging Union's request for "deems desirable" information. According to Maxson, Marshall came to his office because he wanted to resolve the grievance before it progressed. Marshall, however, testified that Maxson came to his office. Nonetheless, it is not necessary for me to resolve this minor discrepancy to rule on the merits of the case.

Stanford Junior University, 307 NLRB 75, 80 (1992), the Board summarized its application of the principles as follows:

> [T]he Board has long held that Section 8(a)(5) of the Act obligates an employer to furnish requested information which is potentially relevant to the processing of grievances. An actual grievance need not be pending nor must the requested information clearly dispose of the grievance. It is sufficient if the requested information is potentially relevant to a determination as to the merits of a grievance or an evaluation as to whether a grievance should be pursued. *United Technologies Corp*., 274 NLRB 504 (1985); *TRW, Inc*., 202 NLRB 729, 731.

The requested information does not have to be dispositive of the issue for which it is sought, but only has to have some relation to it. *Pennsylvania Power & Light Co*., 301 NLRB 1104, 1104–1105 (1991). The Board has also held that a union may make a request for information in writing or orally. Further, the Board has found that a delay is unreasonable when the information requested is easily and readily accessible from an employer's files. *Bundy Corp*., 292 NLRB 671, 672 (1989).

B. Respondent's Unreasonable Delay in Providing the Requests for Information

The General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the Act because the Charging Union's requests for information were relevant and necessary to the performance of its duties as the designated servicing representative of the exclusive collective-bargaining representative of the unit; and Respondent's delay in providing the information was unreasonable. Respondent counters that it responded to the Charging Union's RFIs within a reasonable amount of time.

1. Information is presumptively relevant

Respondent admits that the requested information is necessary for, and relevant to, the Charging Union's performance of its duties as the designated servicing representative of the exclusive collective-bargaining representative of the unit. (GC Exh. 1(k); R. Exh. 1.)

Based on my independent assessment of the facts, I also find that the requested information is relevant and necessary for the Charging Union to effectively perform its duties as the exclusive representative of the bargaining unit. See *United Graphics, Inc.*, 281 NLRB 463, 465 (1986) (the Board held that information presumptively relevant to the union's role as bargaining agent must be provided to the union as it "relates directly to the policing of contract terms.").

2. Respondent unreasonably delayed in responding to Charging Union's RFIs

Respondent argues that the charge should be dismissed because: (1) Respondent responded to the January 23 RFI on the same day by notifying the Charging Union that the "deems desirable" list did not exist; (2) in response to the January 28 RFI, Respondent provided the Charging Union with five names on the same day of the request; and (3) when on February 19 or 20, the Union added four names to management's list of employees possibly designated

"deems desirable," management verified their status in the Employee Key Indicator Report in the eRMS the same day. Respondent notes that it "completed the response and resolved the underlying grievance within 23 days." (R. Br. 7.) According to Respondent, "under the circumstances" its efforts were reasonably prompt. Id. See *West Penn Power Co. d/b/a Allegheny Power*, 339 NLRB 585 (2003) (factors to consider in assessing the promptness of the response are complexity and extent of the requested information, its availability, and difficulty in accessing the information.)

The General Counsel contends that based on the complexity, availability, and difficulty of accessing the requested information, Respondent "could have technically responded to the Charging Party's request in little over one hour." (GC Br. 10.) The General Counsel argues that Respondent's delay, given the facts, is inexcusable and unlawful.

I find that Respondent's arguments fail. It is clear that Respondent's actions, given the totality of the circumstances, do not meet the definition of reasonable promptness as set forth in *West Penn Power Co.* None of Respondent's witnesses testified that the RFIs were complex or voluminous. On the contrary, Maxson testified that he was very familiar with the eRMS because he accesses it almost daily; it took him "minutes" to verify whether the employee names he and Marshall listed on February 19 or 20 were designated as "deems desirable" and delete their names from the system. Maxson's testimony and actions make clear that it would have taken Respondent's managers a minimal amount of time to access the information on the Employee Key Indicators Report in the eRMS. Despite the simplicity of the requested documents, the ease of their accessibility and availability, Florence failed to procure the requested information and refused to accept the Charging Union's January 28 RFI. I find that these actions constitute unreasonable delay. *Postal Service*, 332 NLRB 635 (2000) (the Board found that a 5-weeks delay in furnishing relevant information unreasonable); *Postal Service*, 354 NLRB 412 (2009) (the Board found that a 28-day delay in providing relevant information unreasonable); *Capitol Steel & Iron Co.*, 317 NLRB 809 (1995) (the Board found that a two-week delay in providing relevant information unreasonable).

Accordingly, I find that from about January 23, to about February 20, 2015, Respondent unreasonably delayed in responding to the Charging Union's requests for information dated January 23 and 28, and February 11, and thus violates Section 8(a)(5) and (1) of the Act and within the meaning of the PRA. However, I find that the General Counsel failed to address in its case-in-chief or posthearing brief the charge that Respondent's delay in responding to the Charging Union's RFI dated January 25 was unreasonable. Therefore, I recommend dismissal of this portion of the charge.[10]

C. Respondent Failed to Respond to Charging Union's February 11 RFI

The General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the Act when, since about February 11, Respondent failed or refused to provide the Charging Union with relevant and necessary information for the Employee Key Indicators Report and letters given to

[10] The record does not contain a written or oral RFI submitted on January 25. Moreover, there is no mention in the record, other than in the amendments to the complaint, of a RFI dated January 25, 2015.

employees indicating that they are on the "deems desirable" list. The General Counsel notes that the Charging Party never withdrew its information requests for "Deems Desirable information with the settlement of the January 30 grievance", and still wants to know "who Respondent classified as Deems Desirable so that it can ensure Respondent is following the parties' collective bargaining agreement." (GC Br. 12–13) The Respondent, however, counters that it reasonably believed that the Charging Union was no longer seeking the requested information because in the course of resolving the grievance, the Charging Union did not notify management that it "still wanted responses to the 78 requests for information or that it 'was still looking for more information in connection with these RFIs.'" (R. Br. 8.)

Once again the relevancy of the RFI is undisputed. Therefore, the remaining question is whether Respondent complied with the lawful request. I find that Respondent failed to fulfill its legal obligation to provide the Charging Union with the necessary and relevant requested information.

Marshall specifically requested the Employee Key Indicators Report to include Administrative Action Summary for 78 employees and if the employee is on "deems desirable," a copy of the letters sent to those employees designated as "deems desirables." He made this request through the proper channels. Despite acknowledging the requests and relevancy, the only information Respondent provided him was a list of five names Florence and Bell could recall from memory that were on "deems desirable," and the four additional names that Marshall provided of employees who he suspected were on the "deems desirable" list. Respondent did not provided the Charging Union with the specific information Marshall requested on February 11. Instead, Respondent ignored the specific request and provided the Charging Union with information on only nine employees. The Charging Union remains ignorant of all of the employees that were or are currently designated as "deems desirable."

Respondent argues that by settling the grievance involving employees on the "deems desirable" list, it was reasonable for it to believe that the Charging Union was no longer seeking the requested information. Moreover, Respondent contends that its case is further buttressed by the fact that Marshall informed Maxson that the Charging Union was going to ask the NLRB to withdraw the underlying unfair labor practice charge in the case because of the grievance settlement; and the findings in *AT&T Corp*., 337 NLRB 689, 691 (2002).

Respondent's arguments are not persuasive. The record does not contain evidence that Marshall informed Maxson that the Charging Union was going to ask the NLRB to withdraw the charge in the case at issue. Respondent attempted to introduce such evidence but I upheld the General Counsel's objection because it went beyond the scope of the General Counsel's direct-examination. I also find that it was not reasonable for Respondent to believe that the grievance settlement also resolved the February 11, information request. There is no evidence that at any point the Charging Union withdrew its RFI. While Maxson testified that on about February 19 or February 20, Marshall "agreed to drop the labor charges based off of the request for informations (sic) that he had file", he does not testify that Marshall told him he would also withdraw the February 11 information request. Even assuming Marshall told Maxson the Charging Union would ask NLRB to withdraw the charge, the unfair labor practice charge and the February 11, request for information are distinctly separate items. Based on the limited amount of information Respondent provided the Charging Union as a result of the grievance

settlement, it should have been clear to its management that the Charging Union continued to seek the requested documents. Moreover, written resolution of the grievance made no mention of providing the Charging Union with the Employee Key Indicators Report for 78 employees and the letters provided to those employees designated Deems Desirables. The grievance settlement form notes that the parties agree to resolve the grievance with "[a]ll carriers placed on Deems Desirable in ERMS as of 2/20/2015 will be removed immediately." (GC Exh. 5.) Again, no mention is made of giving of the Charging Union the information it requested on February 11. Last, I find that *AT&T Corp.* is inapposite to the matter at hand because, unlike the employer in *AT&T Corp.*, Respondent did not provide the Charging Union with all of the information it requested.

Accordingly, I find the Respondent failed and refused to provide the Union with relevant and necessary information that it requested since on or about February 11, in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. Respondent, United States Postal Service, provides postal service for the United States and operates various facilities throughout the United States. The Board has jurisdiction over Respondent and this matter by virtue of Section 1209 of the PRA.

2. The National Association of Letter Carriers, AFL–CIO and the Charging Union are labor organizations within the meaning of Section 2(5) of the Act.

3. By its unreasonable delay in providing the necessary and relevant information requested by the Charging Union since on or about January 23, 2015, Respondent has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act and within the meaning of the PRA.

4. By failing and refusing to furnish the necessary and relevant information requested by the Charging Union since about February 11, 2015, Respondent has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act and within the meaning of the PRA.

5. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

6. The Respondent has not violated the Act except as set forth above.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices by its delay and refusal in providing the Charging Union with the necessary and relevant information it requested, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The General Counsel requests that I order as appropriate remedies an affirmative bargaining order, a broad cease-and-desist order, and "any other labor organization" language for Respondent's unreasonable delay and refusal in providing the Charging Union with the requested information in violation of Section 8(a)(5) and (1) of the Act. I find, however, that traditional remedies are appropriate in this matter. In *Hickmott Foods*, 242 NLRB 1357 (1987), the Board held that a broad cease-and-desist order is warranted only when it has been established that an employer has a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate its general disregard for the employees' statutory rights. The Board has also found that a broad posting requirement was appropriate when the respondent displayed "a clear pattern or practice of unlawful conduct." *Postal Service,* 339 NLRB 1162, 1162 (2003). I find, however, that the evidence in this case is insufficient to show that in the Jackson DDC facility in Michigan, Respondent has shown a proclivity to violate the Act or engaged in such egregious misconduct as to demonstrate a disregard for employees' fundamental statutory rights. The settlements, judgments, and orders cited by the General Counsel to support issuance of the requested remedies do not involve the Jackson DDC facility in Michigan.

Therefore, Respondent will be ordered to post and communicate by electronic post to employees the attached Appendix and notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

ORDER

Respondent, United States Postal Service, in Jackson, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Branch 232, National Association of Letter Carriers (NALC), AFL–CIO (Charging Union) by failing and refusing to and, or unreasonably delaying in providing the Charging Union, information requested that is necessary and relevant to its role as the exclusive representative of the employees in following unit:

> All full-time and regular part-time city letter carriers employed by Respondent at various facilities throughout the United States, but excluding professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, postal inspection service employees, employees in the supplemental work force, rural letter carriers, mail handlers, maintenance employees, special delivery messengers, motor vehicle employees, postal clerks, managerial employees, supervisory personnel, and security guards as defined in Public Law 9-375, 1201(2).

[11] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

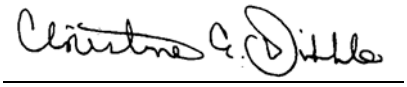
2. Take the following affirmative action necessary to effectuate the purposes and policies of the Act.

(a) Within 14 days from the date of the Board's Order, furnish the Union with all information it has requested since on or about January 23, 2015.

(b) Within 14 days after service by the Region, post at its Jackson DDC facility in Michigan copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 23, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: Washington, D.C. September 19, 2016



Christine E. Dibble (CED)
Administrative Law Judge

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively and in good faith with Branch 232, National Association of Letter Carriers (NALC), AFL–CIO (Union) by failing and refusing to furnish it with requested information in a timely manner that is relevant and necessary to the Union's performance of its duties as the collective-bargaining representative of our unit employees at our Jackson DDC facility in Michigan.

WE WILL NOT in any like or related manner fail and refuse to bargain collectively and in good faith with the Union as the servicing representative of the exclusive collective-bargaining representative of our employees in the unit at our Jackson DDC facility in Michigan.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL provide the Union with the Employee Key Indicators Reports to include Administrative Action Summary and showing if the employee is on "deems desirable "for [employee] from January 2014 to current; and if employee is on "deems desirable," copy of the letter given to an employee indicating he/she is on "deems desirable."

UNITED STATES POSTAL SERVICE
(Employer)

DATED: _____ BY_____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under

the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226-2543
Telephone: (313) 226-3200
Fax: (313) 226-2090
Hours of Operation: 8:30 a.m. to 5:00 p.m. ET
Hearing impaired callers should contact the Federal Relay Service by visiting its website at www.federalrelay.us/tty

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/07-CA-146385 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (313) 226-3200.